THE PRIVILEDGES AND PREROGATIVES of the High Court of Chancery.

Written by the Right HONOVRABLE *Thomas* Lord *Elsmere*, late Lord Chancellour of ENGLAND.

LONDON,
Printed for *Henry Sheapheard*.
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The Preface.

THe gravitie and diſcretion of the Iudge in antient time, hath beene ſuch, as in doubtfull cauſes and eſpecially for conſtruction of Statutes, they deſired to conferre with the Kings Privie Councell, whereof there be many examples, ſome are cited in the Caſe of Poſt nati.

And this ought to be ſpecially regarded, where the authority and Iuriſdiction of the Kings Court is to be brought into Diſpute and queſtion.

For gravius privatorum damno peccatur, Cùm inter ſummos Magiſtratus Curiaſuè majores de imperio certatur. *Bodm. lib. 3. Cap. 6. p. 425*

And in theſe caſes the Iudges ſhould firſt have private and loving Conference together, before publique diſputes, according to the Emperour's command. *Bodm. lib. 3. Cap. 6. p. 425.*

Alloquere illum, nè rem injuſtam faciat.

The Preface.

NOTES AND OBSERVA-tions upon the Statutes of *Magna Charta. cap.* 9. and other Statutes concerning the proceedings in the *Chancery*, in cases of Equitie and Conscience.

THe Statutes, which be now urged and stood upon against the *Chancery*, are first *Magna Charta*, where the words be *Nisi per legale iudicium parium suorum vel per legem terræ.* It is *lex terræ*, that is, the Iudges of the Common Law shall determine questions in Law, and *Pares & Iurors* to try matters in fact, so the *Chancery* is to order and decree matters of Conscience and Equity, which cannot be remedied by the strict rules of the common Law: And the same rule serveth for understanding, the Statute *anno* 25. *Edward* 3. *cap.* 4. Vpon these words, *Sic non fuit duement mesne en respons & seruindz d'icelle per voy de lege.* And it appeareth the cause of making that Statute, was to restraine private suggestiõs made to the King or to his Councell, but not meant to take away the ordinary judiciall proceedings and hearing of Cases of conscience and equity in the *Chancery.*

Mag. Chart. Cap. 9.

Stat. 25. *Ed.* 3. *Cap.* 4.

Hath the same words, as *Magna Charta, cap.* 9 *viz.* Without being brought into answer by due processe of Law: For understanding whereof, that is to bee remembred, that those that are sued in the *Chancery*

Stat. 28. *Ed.* 3. *Cap.* 3.

are brought to another by due proceſſe of law, for caſes of equity and conſcience as it is *per legem terræ*.

Stat. 2. Ed. 3. Cap. 8. That it ſhall not be commanded by the great Seale or the little Seale, to diſturbe or detaine common right: and though ſuch commandement doe come, the Iuſtices ſhall not therefore ceaſe to doe right in any point.

For the underſtanding of this Statute.

The ordinary Iudiciall proceedings by the *Chancery*, according to conſcience and equity, is not any diſturbance, or delay of Common right.

But is the doing of right and Iuſtice in caſes, which the common Law cannot helpe, for common right ſtandeth not only in the ſtrict rigour, and extreamity of the Law (for often *ſummum ius eſt ſumma injuria*) but rather in the doing of right, according to equity and conſcience: And the Iudges of the common Law themſelves, doe almoſt every day extend their diſcretion, to ſtay and mittigate the rigour and ſtrictneſſe of the common Law: and in ſo doing doe, well notwithſtanding the ſtrict word of their oath.

Stat. 14. Ed. 3. Cap. 14. Declareth the law concerning writs of ſearch, and in the end of the ſame Statute, theſe words, *viz.* That by commandement of the great Seale, nor Privie Seale, nor point of this Statute, (viz. concerning Search) ſhall be put in delay.

Nor that the Iuſtices, of whatſoever place they be, ſhall lett to do the common law by commandement, which come to them under the Great Seale or Privie Seale.

The Common Law hath alwaies allowed the proceedings in the Chancery, in caſes of conſcience and

equity

equity; and therefore the words (to doe the Common law) must not be construed too precisely, as thereby stop all Courts of equity, for it standeth with the common law, as well that equity and conscience bee ministred, where the common law cannot helpe, as that strict Iustice be ministred according to the common law, when the common law may serve.

The Chancery doth not commonly send any Writ or Commandement to the Iudges, under the great Seale cõmanding them to stay to do Iustice, but awardeth Iniunction to the parties, that seeke to have the advantage of the strictnesse of the common law, against equity and conscience: nevertheless there be plentiful examples that Writs of *super sedeas*, under the great Seale have beene directed to the Iudges, in diverse speciall causes, and have in all times (untill of late) beene dutifully obeyed, as in cases of priviledge and to stay their proceedings: *Reges in consulto* and divers others, &c. 2

Also it is to bee remembred, that many Iudges of the common Law have complayned, and sued for remedy in the Chancery; and have beene sued and answered there, and obeyed the orders of that Court in cases of equitie and conscience, which could not bee relieved by the Common law.

This Statute is persuing two former *Stat.* one 37. *Edward* 3. *cap.* 18. which giveth *panam Talionis*, against those, which make false suggestions to the King: the other 38. *Edward* 3. *cap.* 9. which confirmeth the former statute in all things saving *pro pœna Talionis*. And this 42. *Edward* 3. explayneth the two former, and provideth that the people be not greived by false accusers which doe often times make their accusements more for vengeance and singular profits then for the *Stat.* 42. *Ed.* 3. *cap.* 3.

profits

profits of the King and his people, and therefore ordaineth that none bee put to answer (which is to bee intended upon such accusation and false suggestions) without. 1. presentment before Iustices, or 2. matters of Record, 3 by due processe, or 4. by Writ originall according to the onely law of the land.

In this Statute, the intent is to bee considered, first to explaine, the second former statute *Anno* 27. *Edw.* 3. and *Anno* 38. *Edw.* 3. as is before noted, 2. that the antient law of the land bee observed, that is; That for matters determinable by the common law, none bee put to answer, but by presentments or matters of Record, or by originall Writt, or by due processe. But therein is not meant, that the ordinarie iudiciall proceedings in the Chancery, in matters of equity and conscience (not being remediable by the Statutes of the common law) should be taken away or restrained: But that in such cases, they may proceede against parties called in by due processe, for that is according to the antient law of the land.

So the practise and experience hath beene ever since, which is the true and certaine interpretation of that Statute and of all other Statutes.

Stat. 4. Hen. 4. Cap. 23. The words be these, Whereas as well in plea Reall, or as in plea personall after Iudgement given in the Courts of our Soveraigne Lord the King, the parties be made to come upon grievous paines sometime before the Kings Councell, & sometime in the Parliament to answer thereof anew, to the impoverishment of the parties aforesaid, and subvertion of the Common Law of the Land: It is ordained and established, that after Iudgement given in the Court of our Soveraigne Lord the King, the parties and their Heires thereof shall be in peace untill the Iudgement

shall

ſhall bee undone by attaint, or by errour, if there bee errour, as hath beene uſed by the Lawes in the time of the Kings progenitors.

For underſtanding of this Statute the queſtion is,

Whether there be any thing in the word or intent of this Statute to take away, or reſtraine, or impeach the Iuriſdiction of the Chancery to give remedy and releife according to conſcience and equity in caſes, which cannot bee remedied by the ſtrict rules of the common law, by attaint, or by Writ of errour.

For the reſolving of this queſtion, is to bee conſidered, what hath beene uſed by the lawes, before the making of this Statute.

And to this point I muſt ſay, I have not ſeene any record or Preſident, that the Court of Chancery hath beene reſtrayned to heare and determine cauſes of conſcience and equity, and to give relieſe accordingly, as well after, as before Iudgement given by the Judges of the Common Law.

But before the making of this Statute, there bee many precedents and records to prove, that the King and his Councell, and the Kings Commiſſioners appointed to be auditors *querelarum* & Court of Rome, & ſome, pretending to have power and authority for the Pope, did take upon them to examine ſuch Iudgements to reverſe and undoe the ſame, which ſeemeth to be the point remedied by this Statute: And this is within the direct and preciſe words of the Statute, whereupon it may be inferred and concluded, that if the words ſhall bee taken preciſely in the ſtrict

Vn. Stat. 29. Ed. 3. cap. 1.

sence; Then the King himselfe and his Counsell, and the Parliament, who in time of the Kings progenitors, used to examine & reverse Iudgements, shall be bound and restrained by the *Statute*; But the Chancery medleth not with the reversing of the Iudgments given by the Iudges of the common Law, but in allowing the same to be good and just, according to the strict rule of the Common Law (whereunto the Iudges are sworne) doth examine only the equity of the case, according to the rule of equity and conscience, and taketh order with the partie, to doe that which in equity and Conscience ought to bee done, which the Iustices of the Common Plees hath no power to doe, and that seemeth to be the true reason that the Statute doth not once mention the Chancery.

And it cannot reasonably be conceived, that the Parliament meant to bind the Chancery (which is not named) or the King or his Counsell and the Parliament it selfe, which are expressely named: That they should not releive parties that are grieved by the Rigour of the common Law, against equity and conscience in cases, which the Iudges of the Common Law cannot relieve the by atteint, or errour, or otherwise. For *sententia Iudicis non præiudicat veritati*: And *sicut res iudicata naturalem obligationem non tollit, ita conscientiam, famamque conscientiam non purgat*: And some doctrine & truely define equitie thus; *Equitas est publici iuris moderatio apicibus Regia, vultus ab Oraculo petenda.* And another saith thus, *Equitas in potestate moderatoris esse debet, multa contra scriptum facere et dicere*: Another saith, *Equitas iustitiæ asperitatem retundit*: And Saint *Augustine*, *Lex quidem ipsam molimen non potest mitigando*

In Casus. 192. in que. vel. & novi. lib. pradict. Cap.

est

est & contemptus, fraus, & dolus, in Curia Regali, vt minus subuenire debeat.

And furthermore for the true understanding of this Statute, and all other Statutes, this rule should be obserued: 1. to understand, and consider what was the mischeife at the Common Law, which the Parliament meant to remedie within this Statute. It appeareth to haue beene the reuersing and undoing of Iudgements by the King or his Counsell, or his Commissioners or Parliament, which might and ought to be examined by attaint or errour, as is aforesaid, but not the ordinary Iudicial proceedings in Chancery, according to equity and conscience to giue releise to the partie grieued, by the strict rigour of the Common Law or in cases which could not be remedied by attaint or errour, or by any other ordinarie meanes by course of the Common Law, and where they in that equitable, proceeding did not attempt to reuerse or impeach the iudgement given by the Common Law, but to admit and allow the same to be good and just, as is before declared. 1.

The next is how this Statute was understood and expounded at, and soone after the tyme of the making of that, for in all cases *cotemporanea expositio* is specially to be regarded: and for it (as I said before) I haue not seene any Record or Precedent that this Statute hath beene expounded to restraine the Chancery, to proceede in their ordinary courses, to giue releise in cases of equity, according to good conscience. Nere the time of the making of it, or many yeares after. 2

And I suppose no such materiall or effectuall record or precedent can be shewed. And for later times as in the time of *Henry* the seuenth, and since, the pro-

ceedings and examples bee so frequent, and so plaine & direct, as nothing is more common, and it is a certaine and true rule *Intellectus currit cum praxi.*

4. And if any ambiguity, or doubt should bee conceived upon the words and intent of this Statute, sith it concernes the jurisdiction of the Kings Courts, which have no power, nor authority but from the King whom they serve: One Court ought not to take upon them to Iudge and deside their owne Iurisdiction, and the Iurisdiction of another of the Kings Courts: But then *Bractons* rule is to be holden: (that is) that the King's interpretation is to be expected, Who is to declare and expound all doubtfull or obscure words in *Chartis Regiis & factis regum:* For all Statutes are *facta regia*, made at the request and by the consent of the Lords Spirituall and Temporall, and the Commons.

Bracton. lib. 2. fol. 34. cap. 16.

22. Edw. 3.

And where some new conceits have beene lately imagined, that the partie grieved should have complained before Iudgement or else not to be heard or relieved after Iudgement by reason of this Statute. This is but a cavill and a Sophisticall distinction not worthie the answering. For before hee bee hurt, he

3 hath no cause to complaine, & that, which hurts him, is the Iudgement grounded upon the strictenesse & rigour of the Common Law, against equity and conscience, and when he feeles the wound it is time for him to complaine to seeke remedie, by complaining of the wrong, which is done unto him by the rigour of the Common Law, contrary to equity and a good conscience, and of this sort be the precedents and examples before mentioned.

Lastly it is to bee lamented that the ancient common Lawes are so much neglected and contemned,

and almost growne obsolete and out of use: that for the most part, wee have not the substance but the shadow of the antient Common Law, *Manet magni nominis umbra*: and therefore his Majestie at the first beginning of his gratious raigne of *England*, did most princely, prudently, and iuditiously shew his mislike of the incertaintie of the Iudicature in his Courts of Iustice in *England*, and require and commanded his Iudges to take mature consideration of it. What followed I will say nothing. *King Iames.*

Wherefore let the Iudges now consider, how they observe in their Courts and proceedings, the words and intent of this Statute, whether after Iudgements the parties be in peace, untill the Iudgement bee undone by attaint, or errour, whether after Iudgements in Writs of errour sisme, they suffer not new Actions, and verdict, against verdict, and Iudgement, against Iudgement without attaint or errour to the manifest deluding of the true and antient Maximes of the common Law, and without regarding of the words of the Statute. And thus suites for one, and the selfe same cause, are carried from Court to Court, as power and might of the parties, or favour or affection of the Iudges, or corruption of Sheriffes or subordination or perjury of Witnesses or such like shifts or tricks can best accomodate the businesse.

De Chartis regis & factis regum, non debent, nec possunt Iusticiarij, nec private persone disputare, nec etiam nisi illa dubitatio oriatur, possunt eam interpretari & in dubiis et obscuris, vel si aliqua dicta duos contineat intellectus Domini regis erit expedienda interpretatio & voluntas eius sit interpretari, cuius est condere. Maneant termini patrum, & inter fines proprios se quisque contineat, Sufficiant limites, quos *Bracton. lib. 1. fol. 34. cap. 16.* *Leo. Epist. 67. & 94.*

quas ſanctorum patrum prouidentiſſima decreta Poſuerunt.

Stat. 25. *Ed.* 3. *Cap.* 22.

Some notes and obſervations upon the Statutes of *Proviſoes* and *Præmunire* eſpecialy concerning the Chancerie and other Courts of equitie.

The words be, 1. becauſe ſome doe purchaſe in the Court of *Rome* proviſions, to have Abbies and Priories in *England* in deſtruction of the Realme, and of holy religion, it is accorded that every man that purchaſeth ſuch proviſions of Abbies and Priories, that he and his executors, and procurators, which doe ſue and make execution of ſuch proviſions, ſhall be out of the Kings protection, and that a man may doe with them, as of enemies of our Soveraigne Lord the King and his Realme.

Note. Note the uſurpation of the Church of Rome in this Caſe Iudged at this time, to be the diſtruction of the Realme and of Religion.

And the partie himſelfe and his Executors and procurators putting in execution ſuch proviſions, iudged to be enemies of the King and Realme, and out of the Kings protection, (and ſo in worſe degree then Traytors) and that therefore every man might iuſtifie the taking of their goods, and killing of them, and not to be impeached for it.

Anno 25. *Edward* 3. There is another Statute entituled *Statuta de proviſorib.* declaring the great miſcheife that the King and the Realme ſuſtayned, by the uſurpation of the Pope, in caſes of proviſions and reſervations of Benefices, reciting the Lawes ordained by King *Edward* the firſt, and adding further remedie, and ſevere puniſhment againſt the offenders, and alſo no proceſſe or

ſute

fuit should bee in these cases in the Court of *Rome*, nor in no part else where.

Both these Statutes were specially provided to restraine the usurpation of the Pope, and the Churches of Rome in these cases of provisions, and reservations.

By the Statute *Anno* 27. *Edward* 3. it appeareth, That notwithstanding the two former statutes *Anno* 25. *Edward* 3. yet the usurpation of the Pope, and the Church of Rome, was so exorbitant, that the Nobles and Commons complained in this Parliament, and prayed further remedie for the same, alledging that divers of the people have beene drawne out of the Realme, to answer of things whereof Counsance pertayneth to the Kings Court, or of things whereof Judgements be given in the Kings Court, or which sue in another Court, to defeate or impeach the Judgements given in the Kings Court, in prejudice and disherison of the King and his Crowne, and of all the people of his Realme, and the undoing, and distraction of the Common Law of the same Realme at all times vsed. *Stat. 27. Ed. 3. Cap. 1.*

This is the Mischiefe, which was complained of and was desired to be remedied.

The Offenders, against whom remedie is sought, are these, which draw any out of the Realme by plea.

Wherfore the Counsance being to the Kings Court or of things, whereof Iudgements be given in the Kings Court, or which doe sue in another Court, to defeat

ſeat or impeach the Iudgements given in the Kings Court.

Then the remedie provided is,

That ſuch offenders ſhall receive puniſhment by two moneths, to be before the King and his Counſell, or in his Chancery, or before the Kings Iuſtices of the one Bench or other, or before the Iuſtices of the King, which to the ſame ſhall bee deputed to anſwer in proper perſon to the King for their contempt done in this behalfe, and if they come not, then to be out of the Kings Protection, &c. Provided, that when they doe come before, they be out-lawed, they ſhall be received to anſwer.

Now it will appeare manifeſtly that the intent of the Parliament, was not to reſtraine or puniſh any that complayned and ſued in the Chancery, to bee releived according to equity and Conſcience; In Caſes wherein, by the ſtrict rules and rights of the Common Law, the Iudges of the Common Law could not releive them, neither are there any words in the Statute, which can without violence bee ſtrayned or reathed to ſerve any ſuch unreaſonable Conſtruction: For the better underſtanding hereof, the parts of the Statute are to bee devided and ſeverally conſidered.

1 1. As firſt the miſcheiſe complained of.

2 2. The offenders, againſt whom, the Complaint is.

3 3. The remedie provided, and againſt whom, the forme of proceeding therein.

For the miſcheiſe, the Parliament finding, that the Pope and Court of Rome did not only continue

tinue their usurpation in the Cases mentioned in the former Statute. An. 25. Ed. 3. But did also extend it further in drawing the people out of the Realme to answer things, whereof the Coumsance pertaineth to the Kings Court, or of things whereof Iudgements bee given in the Kings Court, or by suit in another Court, to defeate or impeach the Iudgements given in the Kings Court; In prejudice, &c.

In the preamble, wherein this mischeife is declared, it appeareth that the drawing of the people out of the Realme to answer to those Cases, specially remembred, was the greife of the people, for which they prayed remedie.

But by suites in the Chancery to be relieved according to equity and conscience in cases, in which the Iudges of the Common Law could not give remedy, the people were not driven out of the Realme, nor Iudgement given in the Kings Courts, were not sought to be defeated or impeached, but conscience and equity to be observed.

Nor such suites in the Chancery cannot bee accompted to be any other court then the Kings Court. For the *Chancery* is one of the Kings supreame Courts of Iustice, and as much or more greived by the inordinate usurpation of the Pope and his Courts as any other of the Kings Courts. Neither could such suits in the *Chancery* being the Kings own supreame court, bee in prejudice or dishersion of the King and his Crowne, and of his people; or the undoing or distruction of the Common Law at all times used. And I suppose there can no record or warrantable precedent be shewed that such proceedings in the *Chancery* hath in times before used (that is before 17. Ed. 3.) beene conferued to be the undoing or destruction of the Common Law.

And hereupon it may bee inferred and concluded that those, which complaine and sue in the *Chancery* for releife and remedie, according to equity and conscience, in such cases as the Iudges of the Common Law cannot remedie, are not any offenders within the words or meaning of this Statute.

And this will appeare more plainely by the remedie, which is provided; that is, that the offenders shall have garnishment by two moneths, to appeare before such Iudges, as are assigned to give remedie in the causes before mentioned in the Statute, which are these: The King and his Counsell, the Chan. the Iustices of one Bench or the other, or other Iustices of the Kings, which shall be deputed.

Wherein is to be noted, that the Chancery is the second Court that is appointed to give Iustice against such offenders, as the Parliament meant, and is placed next after the King and his Councell, and before the Iudges of the one Bench or the other (between whom the Parliament giveth no prioritie nor precedent) & adjoyneth such other Iustices, as the King shal depute. By which power the King may by the Statute exclude both these Courts, & appoint other Iustices, if it shall please him so to doe.

Now it is too absurd to say or imagine, that the ordinarie and iuditiall proceedings in the *Chancery* by the Kings owne Authority, in cases before remembred, can be in prejudice or diminution of the King or his Crowne or destruction of the Common Law: or that the Parliament did so meane or understand, as they have designed the *Chancery* to bee a speciall or prime Court to punish offenders against the said Statute.

And to resort to the true rule *Contemporanea expo-*

sitio

sitio, for *Intellectus currit cum practi.* I have not seene nor heard that any person hath beene charged, or impeached by suit in the nature of a Præmunire upon this Statute for sueing in the Chancery in the Cases before remembred, or in any other like cases.

The Statute 27. *Ed.* 3. was grounded upon the exorbitant usurpations of the Pope and Church of *Rome*, which were in some sort provided for, by the former Statutes *An.* 25. *Ed.* 3. But the Parliament *Anno* 27. *Ed.* 3. finding the same too weake, and the Church of Rome did not only continue their former usurpations, but did daily increase the same more and more, did therefore devise further remedie against their insolent and outragious excesse.

Wherein appeareth that the speciall mark, whereunto both those Parliaments aymed & directed their Actions, was to provide and give remedy against the wicked proceedings of the Pope and Court of Rome, and not to restraine the jurisdiction and authority of any of the Kings owne Courts in their ordinarie and judiciall proceedings, either in law or equity, and by that which is before remembred, is sufficiently declared, yet the same is made more manifest by the Statute *Anno* 38. *Ed.* 3. Stat. 2. *cap.* 1. 2. 3. 4.

By which it appeareth that in 9. yeares space, after the Parliament *An.* 27 *Ed.* 3. the Pope and Church of Rome ceased not to goe on still in their wicked and mormious usurpations upon the king & the Crown, and therefore that Parliament *Anno* 38. *Ed.* 3. declareth plainely, that it was the Court of Rome, that deale in cases, where of the Counsance and finall diffinitions pertaine to the King and his Royall Court; and for remedie thereof ordaineth, that the former Statute made *Anno* 25. *Ed.* 3. and *Anno* 27. *Ed.* 3.

shall be in all things affirmed and executed, adding also some further punishments and provisions against the offenders, directing the proceeding therein to be before the King and his Councell, onely without mentioning any other Courts, as 27. *Ed.* 3. did.

So as upon conferring together these three Statutes viz. 25. 27. and 38. *Ed.* 3. it appeareth that the intent of al these Parliaments was onely to punish offenders, that maintained the usurped and pretended authority of the Pope, & Church of Rome, and prosecuted any Action or sute by vertue of the same in any case, whereof the Counsance and finall discussing perteyned to the King and his Courts; And therefore if any doubt bee conceived upon any words in the Statute 27 *Ed.* 3. it is to be explained by the Statute 25. *Ed.* 3. going before, and the Statute 38. *Ed.* 3. comming after.

Stat. 16. *Ric.* 2. *Cap.* 5. After all these Statutes, yet ambitious usurpers, and greedy covetous extortions of the Pope and Court of Rome ceased not, but still continued and increased more and more, where-upon the Parliament *Anno* 16. *Rich.* 2. *chap.* reciting some particular cases, *viz.* that Iudgments being given in the Kings Courts for recoverie of presentments to Churches, & Benefices, and the same Iudgements duly executed by the Arch-bishop and Bishop as they ought to bee; That thereupon the Archbishop and Bishop have excommunicated by the Popes censure for executing of the same Iudgements.

And also that the Pope did ordaine and purpose to translate some Prelates out of the Realme, and some from one Bishop-pruck to another within the Realme, without the assent or knowledge of the King, by which the king should bee destitute of his Councell; and

and the treasure of the Realme to bee made away out of the Realme, and so the Regality & Crowne should be made subject to the Pope in perpetuall distruction of the King and his Crowne, and all the Realme.

In which cases, and in all other cases attempted against the King, his Crowne, and Regalitie, the Lords Temporall and Commons, did promise to stand with the King and the Crowne, and to live and die; and the Lords Spirituall promised also, to stand with the King in the cases before mentioned, and in all other cases bound by their alleagiance with a speciall protestation and saving of the Popes authority in excommunicating of Bishops, and translating of Prelates, according to the Lawes of the holy Church, & thereupon it is ordained and inacted, that if any purchase or pursue in the Court of Rome or elsewhere, any such translations, processes, and sentences of excommunication, Bills, Instruments or other things, which touch the King, against him, his Crowne and Regality, or his Realme, as is aforesaid: And they, which bring or receive the same within the Realme, or make thereof notification or any other execution within, or without that they, &c. shal forfit, &c. and to be put out of the Kings protection, & be attached, &c. and sue in processe of Premunire, &c. And against others, which sue in other courts in derogation of the Kings royaltie.

By this it appeareth plainely, that the Pope and Court of Rome continued still, and proceeded further in their exorbitant usurpation upon the Crowne and Kings Royaltie, and the common Lawes of the Kingdome: So this Parliament endavoured to meete with, and stand with the same, namely in the particular cases, which are specially mentioned, *viz.* Concerning Iudgements given in the Kings Court in

these pleas and cases, and in translating of Prelates &c. and in other cases attempted against the Kings Crowne and Regality; But it is manifest, that the intent and the scope and drift of the Parliament was onely against the Pope and Court of Rome, and against those persons, that persue any such Translations, processe, &c. or other things, which touch the King, or against his Crown, or Regality or his Realme as is aforesaid, and which being, notifie or execute the same within the Realme or without, these be offenders, which the Parliament had cause, and meant to punish, and it is strange and improbable, that any learned Iudge of the Common Laws of *England*, should stretch or extend the words of this Statute further, then only against the usurped authority of the Pope, and Church of Rome; But it seemeth that some that take pleasure *ludere in verbis, dormitare in sensibus*, and to dispute *de apicibus juris, æqui & boni ratione pretermissa*, and to professe learning *peritia literali non intelligentia spirituali*; And so are contented *verba legis tenere & vim legis ignorare*, have gone about to presse and straine the word of this Statute, not onely against the Pope and Church of Rome, but also against the Kings owne High Court of Chancery, and other his Majesties Courts of Equitie in *England*, grounding their opinion and conceit upon these words of the Statute,

If any purchase in the Court of Rome or elsewhere, any such Translations, or processes, or other things which touch the King: And for the better understanding hereof, it is to bee remembred, that the Pope & Court of Rome kept their Seiges and Court not at Rome onely, but sometimes at *Avignon*, some times at other places; and divers Antipopes being at one

and

and the selfe same time, kept their severall seiges and Courts at severall places, and yet each of them challenged and pretended to have supreame jurisdiction, power, and authority over and above the King and his Crown & regality in the cases before remebred; And therefore it was requisite and necessarie for the King and the Parliament to withstand and provide remedy against the same.

And that is the true and right understanding of *On Aylers*. For it is too absurd to say, or imagine, that the King or Parliament meant to extend the same against the Kings owne Courts of equity in *England*, which did ever their authority and jurisdiction from him onely, and heard and determined as his substitutes, according to equity and conscience, such cases as the Iudges of the common Law could not by the strict rules of the Common law Iudge & determine.

These Courts and the Iudges, & Ministers therof, the King had power to suppresse, alter, and punish at his pleasure, and therefore against these the Lords Temporall and Commons needed not to engage themselves to stand with the King and the Crowne, and to live and dye, Nor the Lords Spirituall & Clergie to promise to stand with the King, as they were bound by their alleageance, with their Cautious protestations for the ordinarie, legall & iudiciall proceedings, the Chancery and Courts of equity according to conscience.

The King, nor his Crowne, nor Regality, nor the Common Law were not in any danger, but the danger was by the ambitious usurpation of the Pope, and the Church of Rome, and by the proceedings in the Courts holden by that usurped authority; and therefore against them the Parliament provide this Sta-

tute

ture following, the example of the former Parliament 25. *Ed.* 3. 27. *Ed.* 3. and 38. *Ed.* 3. and those be the Courts which this Parliament, & the Parliament *Anno* 27. *Ed.* 3. *cap.* 1. noted to bee in derogation of the Kings regalitie and destruction of the Common Law, but not the Kings owne Courts of equity and Conscience. And for the further clearing of this doubt, if it be worthy to be made a doubt, how these words *on Aylors* shall be understood, in the 5. *Ed.* 4. there is this note, *Nota, que le statute de premunire est in Curiâ Romanâ Vel alibi: lequel alibi, est intendue en les Courtes del eveſques illmit, que ſihome ſoite excompe en court del eveſques perchoſe que appent all Royall Maieſtie ſes ſhoſe alcomen lep il aur premunire & iſſent adiudge & ſith:* abridging that case saith, that 11. *Hen.* 7. the opinion of the Court was so, which he himselfe heard.

An. 5. *Ed.* 4. 6. 9.

Premunire.

By which it appeareth, that the Iudges did then understand the proceedings by the Bishops in the Spirituall Courts, which was by authority derived from the Pope and Church of Rome, was onely meant by the word *vel alibi.* But not the procedings in the Kings owne Court of Chancery by authority derived from him onely in cases of equity and Conscience not remediable, otherwise for that were to set the King against himselfe, which is too inconvenient and absurd.

FINIS.